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Telco Planning, Inc.

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August 5, 1994

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington D.C. 20554

Dear Mr. Caton:

Attached, please find one original and three copies of ex parte and informal comments filed in CC Dockets 90-623 and 92-256. I have enclosed a fourth copy, along with a stamped and self-addressed envelope for your return after date-stamping it. I am also sending courtesy copies of the comments to Peggy Reitzel and Rose Crellin of the Common Carrier Bureau.

Thank you for your time and attention to these matters.

Sincerely,

D. Kelly Daniels

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AUG - 9 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matters of:	)	
	)	
Computer III Remand Proceedings; Bell Operating Company Safeguards; and Tier 1 Local Exchange Carrier Safeguards	)	CC Docket No. 90-623
	)	
Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation	)	CC Docket No. 92-256

EX PARTE COMMUNICATIONS AND COMMENTS OF TELCO PLANNING, INC.

Telco Planning, Inc. ("TPI") respectfully submits these ex parte communications and comments in response to the Federal Communications Commission's ("FCC's" or "Commission's") Public Notice in the above-captioned proceedings. To-date TPI has not had the opportunity to respond to the important issues raised in these proceedings within the filing cycle deadlines; accordingly, TPI appreciates the chance to file its comments now on an ex parte basis.

Factual Background

TPI represents the interests of various enhanced- and information-service providers attempting to develop and grow in the new competitive telecommunications climate.

Among TPI's clients are companies which offer directory assistance with both interactive database and call completion capabilities . . . the very kind of entrepreneurial and new-technology companies that the FCC's pro-competitive policies seek to support.

In particular, several of TPI's clients are certificated resellers of long distance service who assist callers on an interstate basis in accessing multi-style directories and completion of calls through the use of 555 numbers. To provide such service, TPI's clients must purchase from Local Exchange Carriers ("LECs") and the Bell Operating Companies ("BOCs") "carrier access circuits" which forward back to TPI's clients the callers' Automatic Number Identification ("ANI") and "dialed number" information necessary for billing and collection purposes. The LECs and BOCs also use 555 routing and numbers for similar competitive offerings of their own.

Although US WEST Communications, Inc. ("USWC") claims that "there is absolutely no evidence that the information or enhanced services market has suffered from 'inequity' as a result of the Commission's CPNI Rules," Reply Comments of US WEST Communications, Inc., filed May 19, 1994 ("USWC Reply"), pp. 11-12, in fact, TPI can provide extensive evidence of the past and current inequities caused by USWC's control and manipulation of its monopoly power, facilities and software and database information. And TPI and its clients are just some of many who have suffered from the anticompetitive results of this behavior.

For example, over the past several years, TPI has encountered insurmountable anticompetitive practices in USWC's refusal of carrier access arrangements and 555 numbers. With respect to one TPI client in particular, from June of 1992 through the present time, USWC has promised, delayed, denied, newly promised and denied again both carrier access and 555 numbers within USWC's multi-state territories.[1]

USWC's stall and obstruction tactics have meant over $2,000,000 in lost revenues to TPI's client who is up and running in most non-USWC service areas. Equally significant, USWC shareholders have lost over $96,000 in transport revenue and over $1,209,600 in billing and collection revenue from TPI's client. Most important, however, USWC's irresponsible use of a public resource for anticompetitive purposes has resulted in ratepayers' losses; nationwide, large and medium-sized businesses have invested hundreds of thousands of dollars in obtaining software, hardware and personnel to use TPI's client's service and are now stranded at the borders of USWC service territories.

[1] In June and July of 1992, USWC first determined that this TPI client was not eligible for a 555 number as a matter of policy (even though the BOCs' "Notes on the Network" instructed carriers to provide 555 numbers to directory assistance providers). Instead, USWC offered a 10XXX or 950-XXXX capability (reserving 555 numbers for N11 requestors only), a solution not useful to TPI's client. From the following September through July of 1993, TPI, on behalf of its client, worked with USWC to persuade the LEC that the North American Numbering Plan ("NANP") guidelines supported use of 555 numbers for services such as TPI's client's. By July of 1993, USWC agreed to offer the requested 555 numbers as an interim solution until USWC's own Advanced Intelligent Network ("AIN") platform was complete, at which point USWC would be able to provide its own competitive offering. USWC's AIN platform would have added nothing to the TPI client's capabilities but would have significantly increased the client's costs. Since September, 1993, USWC has presented but not signed four different contracts and proposals, but none of them offer the required access arrangements for TPI's client's 555 number.

TPI's client has successfully acquired such access and 555 numbers from other BOCs in other states, and from GTE. Most recently, USWC has resumed its original position in maintaining that the access arrangement and 555 number will not be available at all.

Legal Argument

I. USWC's Monopoly Control of Bottleneck Facilities and Ongoing Acquisition and Merger Activities Ensure Access to Customers and Customer Information that Precludes Competition.

TPI agrees with the comments filed by Tele-Communications Association ("TCA"), the Information Industry Association ("IIA") and the Newspaper Association of America ("NAA") on April 11, 1994 ("TCA Comments," "IIA Comments," and "NAA Comments," respectively) with regard to USWC's and other BOCs' power to preclude competition through their control over access to customer information.

As a monopoly provider of local exchange services, each BOC acquires Customer Proprietary Network Information ("CPNI") with the blessing of both federal and state regulators. The CPNI includes data about the origination, destination and duration of calls, as well as overall calling patterns, operation-change and system-expansion requests, and customer service-choices. Such information is available only to local telephone companies.

As the BOCs, through merger and acquisition, become providers of both content and conduit, equipment and enhanced services, the CPNI obtained in their provision of regulated monopoly services may be shared with and used by their unregulated affiliates to market and preclude competition in unregulated products and services.

In this manner, a BOC and its affiliates can "gain an unfair advantage" by utilizing the CPNI of the BOC's own business customers. See, TCA Comments, p. 4; IIA Comments, p. 1, 3. Thus, BOCs such as USWC may use and share with their affiliates the CPNI of TPI's clients in order to capture for their own use the clients' own customer base.

II. BOCs' Use of CPNI Should be Restricted, But Directory Information is Public Information that Should be Accessible to Competitors.

Because the BOCs and their affiliates may use their own customers' CPNI to gain unfair market advantages, the FCC should formulate and impose CPNI use restrictions. These restrictions should include, among others, a prohibition against BOCs' use of CPNI, absent customer approval for each particular use, for any but regulated communications services.

With this said, the Commission should, nevertheless, distinguish and clarify the differences between CPNI, which should be restricted, and Directory Assistance information which should be treated as the public domain information that it is. TPI endorses a solution to USWC's and other BOCs' desire to offer reverse-search capabilities that allows enhanced- and information-service competitors equal access to that public information.

To the degree that USWC's number 2 scenario for reverse-searching (see, USWC Petition for Waiver, Docket No. 90-623, filed April 4, 1994 ("USWC Petition"), p.4) allows BOC competitors to "interface" with this public information in a way not allowed by USWC's scenario number 3 (see, id.), TPI endorses that former solution. See also, Section III, below.

III. USWC's Number 3 Scenario for Offering EWP Reverse-Search Capability Makes Discriminatory Network Access an Issue.

In its Petition for Waiver of Computer III rules, USWC states that Electronic White Pages ("EWP") "is not a network element or function, but a data base offering" and that such a "data base offering does not lend itself to 'unbundling' of elements." USWC Petition, pp. 6 and 7. Such statements belie the facts that USWC's number 2 EWP scenario does unbundle network and database facilities, and that USWC's preferred number 3 scenario actually combines network and database capabilities into a proprietary platform with which non-BOC enhanced- and information-service providers cannot compete.

Under scenario number 2, USWC would create an "interface" between the existing EWP database and the requested reverse-search capability, with the querying function accessing the database through a newly created interface. USWC Petition, p. 4. This approach would allow other enhanced- and information-service providers such as TPI's clients to build and use their own platforms to access the interface to USWC's public Directory Assistance information in the same manner as would USWC.[2] Thus, this solution would promote competition.

By contrast, under scenario number 3, USWC would be able to manipulate its current network, using and combining its own software, hardware and database, to provide an "integrated" reverse-search/directory-assistance service. USWC Petition, pp.

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[2] It is important to note that resellers of BOC Directory Assistance services would have no interest in this capability, and would instead rely on the BOC to provide this function. Hence, in contrast to enhanced- and information-service providers, resellers such as DirectoryNet, Inc. would be able to sell more services under USWC's scenario number 3. See, p.2, Comments of DirectoryNet, Inc. in support of USWC's Petition for Waiver, filed May 9, 1994.

4-5. By so doing, competitor enhanced- and information-service providers could no longer have access to the public information database through their own interfacing and would be dependent upon USWC's provisioning, access and selective data. In TPI's experience, this dependance upon and control by USWC will mean delay, unkept promises, and ultimately, nondelivery to competitors.[3]

Furthermore, USWC could use the other built-in capabilities of an "integrated" network/database solution to EWP to create platforms or protocol neither useful or friendly to its competitors' systems. For example, depending on the character and field definitions, signaling specifications, equipment and software used in the "integrated" design, USWC could force onto enhanced- and information-service providers certain design and system requirements not beneficial to those businesses. Or, equally damaging, since EWP also allows provisioning of calling name and number screening, USWC could, when it receives a number from its competitors or its competitors' customers, deny or reroute calls, thereby undermining the competition in invisible ways. Consequently, "[d]iscriminatory network access" is "an issue." USWC Petition, p.10.

[3] That the BOCs use "integrated" network and software capabilities to their advantage and their competitors' disadvantage is a fact which cannot be debated. Take for example their bundling and tying together of voicemail service with call forwarding features. Both consumer endusers and non-BOC voicemail competitor providers must purchase call forwarding from the BOC in order to obtain (in the case of the consumer) or sell (in the case of the competitor) voicemail. This "integration" of BOC network and software produces anticompetitive results when the BOCs file same-day tariffs and advertisement campaigns which publicize promotional discounts in both the voicemail service and the call forward feature. Because competitor voicemail providers learn of the discounts after the fact, they are not only severely disadvantaged by the BOCs' substantial headstart, they are forced to lower their own voicemail rates to keep their customers. Such a practice is prohibited in other regulatory arenas; for example, front-running by brokerage houses is prohibited by securities laws.

By contrast, under scenerio 2, competitors would have to design only an "interface" compatable with USWC's and would otherwise retain control over their own system-design and customers.

Like USWC, TPI advocates that the FCC utilize the standards already established for deciding on waivers established in the other proceedings related to the Computer Inquiries. USWC Petition, p.6. Unlike USWC, TPI urges this Commission to find that the high probability of "anticompetitive effects" and "unavailability" of competitive enhanced services, far "outweighs" USWC's interest in entering a new line of business. Id.

IV. USWC's Concern About Costs of Providing EWP Reverse-Search Capabilities Are No Different or More Important Than Competitors' Concerns About Market Entry Costs.

USWC claims that the commentors who oppose it's request and viewpoints simply want "subsidized market entry." USWC Reply, page 11. By the same token, USWC justifies its scenerio number 3, the "integrated" reverse-search capability proposal, by stating that high development costs and delay of entry are automatic results of developing the interface required for alternative number 2. USWC Petition, p.9.[4] Thus, USWC would have the FCC believe and respond to its own concerns with "inefficient and uneconomical" (id.) market entry, while rejecting similar concerns of USWC's competitors.

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[4] Likewise, the other BOCS voiced concern for the expenses involved with scenario number 2. See e.g., Comments of Bell Atlantic, filed May 9, 1994, p.3, n.10 ("Bell Atlantic tentatively estimates the cost of the interface to be around $200,000).

Not only is that USWC position unfair, it is only one of many relevant issues. TPI and others are, in fact, arguing for "competitive parity" beyond the issue of market entry costs. (See, contra USWC Reply, p.11). What TPI and other competitors are urging the Commission to do is to consider the degree to which the BOCs' market power and monopoly control over network, protocol and public information databases will allow the LECs the opportunity for anticompetitive practices.

For the foregoing reasons, Telco Planning, Inc. urges the FCC to grant USWC's Petition for Waiver only on the conditions that that LEC develop reverse-search capabilities under its scenerio number 2, make public domain Directory Assistance information and interfaces equally accessible to competitors, and use CPNI information for regulated common carrier services only.

Respectfully submitted,

TELCO PLANNING, INC.

By: D. Kelly Daniels

Kelly Daniels, President & CEO

August 5, 1994